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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, April 17, 2019
86th Legislature, Number 48
The House convenes at 10 a.m.
Part Two

Five bills are on the Major State Calendar, three joint resolutions are on the Constitutional Amendments Calendar, and 21 bills are on the General State Calendar for second reading consideration today. The bills and joint resolutions analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

Dwayne Bohac
Chairman
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HOUSE RESEARCH ORGANIZATION

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Wednesday, April 17, 2019

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Part 2

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SUBJECT: Providing financial assistance for the development of certain facilities

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Larson, Metcalf, Dominguez, Farrar, Harris, T. King, Lang, Nevárez, Price, Ramos

0 nays

1 absent — Oliverson

WITNESSES: For — (*Registered, but did not testify*: Trey Lary, Allen Boone Humphries Robinson LLP; Alfonso Lucio, Austin Chamber of Commerce; Steve Perry, Chevron USA; Tammy Embrey, City of Corpus Christi; Charles Flatten, Hill Country Alliance; Matthew Bentley, Canyon Lake Water Service Company; Mia Hutchens, Texas Association of Business; Justin Yancy, Texas Business Leadership Council; Perry Fowler, Texas Water Infrastructure Network)

Against — None

On — Jeff Walker, Texas Water Development Board

BACKGROUND: Water Code ch. 16.131 authorizes the Texas Water Development Board to use the state participation account of the development fund to encourage the optimum regional development of projects related to certain reservoirs, facilities, and water treatment works.

Some have suggested that additional financial assistance is needed for the development of desalination and aquifer storage and recovery facilities to meet existing and projected water demands.

DIGEST: CSHB 1052 would require the Texas Water Development Board (TWDB) to identify, establish selection criteria for, and issue a request for proposals for water supply projects that would benefit multiple water planning regions. Selection criteria would have to prioritize water projects that:

- maximized the use of private financial resources;
- combined the financial resources of multiple water planning regions; and
- had a substantial economic benefit by affecting a large population, creating jobs in the regions served, and meeting a high percentage of the water supply needs of water users served by the project.

At least 50 percent of money used from the state participation account in a fiscal year would have to be used for selected inter-regional water projects. TWDB and the Texas Commission on Environmental Quality (TCEQ) would be required to enter into a memorandum of understanding to expedite the approval of such projects.

State Participation Account II. CSHB 1052 would require the comptroller to create a subaccount in the Texas Water Development Fund II state participation account called the state participation account II.

TWDB could use the state participation account II to provide financial assistance for the development of a desalination or aquifer storage and recovery facility, including associated intake or distribution facilities, to meet current or projected water demands, by acquiring ownership of or interest in such a facility. TWDB could act singly or in a joint venture in partnership with any person or entity to the extent permitted by law.

TWDB would not be required to make certain findings required by statute related to the acquisition of ownership or interest in a facility to develop an aquifer storage and recovery or desalination facility, but the board would have to find affirmatively that it was reasonable to expect that the state would recover its investment in the facility and that the public interest was served by its acquisition.

TWDB would be prohibited from providing financial assistance for a facility unless that facility was included in the state water plan. To prioritize facilities for which financial assistance was sought from TWDB, the board would be required to develop a point system that included a standard for TWDB to apply in determining whether a facility qualified for financial assistance at the time the application was filed.

CSHB 1052 would prohibit the board from issuing more than $200 million in water financial assistance bonds to provide financial assistance for desalination and aquifer storage and recovery facilities

If the board did not provide financial assistance to such facilities through the state participation account II before September 1, 2024, TWDB would be prohibited from providing financial assistance for any facility from that account after that date.

TWDB could credit the state participation account II money from the state participation account if the money was needed for purposes related to the authorized use of the account. In addition, TWDB could transfer money from the state participation account II to the state participation account if the board determined such money was needed for similar purposes.

Permits. The bill would revise the permits an applicant would be required to secure from TCEQ before TWDB granted an application to buy, receive, or lease facilities to include all appropriate permits. TWDB could assist an applicant in securing permits for a desalination or aquifer storage and recovery facility.

The bill would take effect September 1, 2019.

SUBJECT: Authorizing cosmetology schools to administer practical examinations

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — T. King, Goldman, Geren, Harless, Hernandez, Herrero, Kuempel, Paddie

0 nays

3 absent — Guillen, K. King, S. Thompson

WITNESSES: For — Brandon Martin, Avenue Five Institute (*Registered, but did not testify*: Rick Dennis, AI-South, PMTS-Texas; Jerry Valdez, Career Colleges and Schools of Texas; Traci Berry, Goodwill Central Texas; David Anderson, Ogle School; Lori Henning, Texas Association of Goodwills; Russell Withers, Texas Conservative Coalition)

Against — None

On — Shawndelle Harrington, Cosmetology Instructors in Public Schools (*Registered, but did not testify*: Raymond Pizarro, Texas Department of Licensing and Regulation)

BACKGROUND: Occupations Code ch. 1603 subch. F permits the Texas Department of Licensing and Regulation (TDLR) to accept, develop, or contract for licensing and certification examinations for barbering and cosmetology, including the administration of the exams. Examinations may include a practical component that can be administered by TDLR or contractors.

Some have noted that barbering and cosmetology students must travel from their school to a third-party location to take the practical examination, incurring extra cost and delaying licensure.

DIGEST: CSHB 2698 would authorize barber schools, private beauty culture schools, and public secondary or postsecondary beauty culture schools to administer practical examinations required for barbering and cosmetology

licensure. Schools would have to be approved to administer the exams by the Texas Department of Licensing and Regulation.

The bill would take effect September 1, 2019.

SUBJECT: Allowing the veterinary board to commission and hire peace officers

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 9 ayes — Springer, Anderson, Beckley, Buckley, Burns, Fierro, Meza, Raymond, Zwiener

0 nays

WITNESSES: For — David Heflin and Sandra Leyendecker, Texas Veterinary Medical Association; (*Registered, but did not testify*: Chris Jones, CLEAT; David Sinclair, Game Warden Peace Officers Association; Elizabeth Choate, Texas Veterinary Medical Association)

Against — Greg Munson; Jodi Ware

On — John Helenberg, State Board of Veterinary Medical Examiners; Heather Kutyba; (*Registered, but did not testify*: Michael Tacker, State Board of Veterinary Medical Examiners)

DIGEST: HB 1099 would authorize the State Board of Veterinary Medical Examiners to employ and commission peace officers. Any person so employed and commissioned would have to be certified as qualified to be a peace officer by the Texas Commission on Law Enforcement. If the board commissioned peace officers, it would have to designate one as the chief investigator.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY: HB 1099 would address problems relating to the intersection of veterinary medicine and crime. In allowing the board to hire peace officers, the bill would promote the safety and security of the people and animals affected by crimes related to veterinary medicine.

Veterinarians' offices are subject to theft because regulated drugs are

often stored in them. Practicing veterinary medicine without a license can lead to illness, injury and death for animals. Law enforcement agencies are often too busy to investigate crimes like these, and they lack the specialized knowledge to do so. Without peace officer status, however, the investigators of the State Board of Veterinary Medical Examiners are unable to receive confidential information from other law enforcement professionals. By allowing the board to have its own dedicated officers, the bill would implement the best solution to these problems.

OPPONENTS SAY:

HB 1099 would further distract an agency that needs to be more focused on its core mission. During its previous review cycle, the Sunset Advisory Commission admonished the State Board of Veterinary Medical Examiners for administrative issues that adversely affected both licensees and the public, which has not improved in the intervening period. The board needs to concentrate on its core administrative functions rather than taking on new tasks related to supervising peace officers.

SUBJECT: Aligning criminal penalties for property theft and tampering with price tag

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Martinez Fischer, Darby, Beckley, Landgraf, Moody, Parker

0 nays

2 absent — Patterson, Shine

1 present not voting — Collier

WITNESSES: For — Kathleen Mitchell, Just Liberty; (*Registered, but did not testify*: Lauren Oertel, Austin Justice Coalition; Douglas Smith, Texas Criminal Justice Coalition)

Against — None

BACKGROUND: Under Penal Code sec. 32.47, it is class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) to tamper with, remove, or substitute certain writing with the intent to defraud another. A writing for these purposes includes price tags, universal product codes, labels, or other markings on goods.

Property theft is an offense under Penal Code sec. 31.03, with penalties ranging from a class C misdemeanor (maximum fine of $500) to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) depending on the value of the property.

Concerns have been raised regarding the discrepancy between the penalty for fraudulent tampering or substitution of writing attached to tangible property and the penalty for theft of that same property.

DIGEST: HB 427 would create a schedule of penalties paralleling those for property theft for the offense of tampering with, removing, or substituting a price tag, if the offender did so for the purpose of obtaining property for sale at a lesser price indicated by a separate writing.

The offense would be:

- a class C misdemeanor (maximum fine of $500) if the difference in value between the writings was less than $100;
- a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) if the difference was $100 to $750;
- a class A misdemeanor if the difference was $750 to $2,500;
- a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) if the difference was $2,500 to $30,000;
- a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) if the difference was $30,000 to $150,000;
- a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if the difference was $150,000 to $300,000;
- a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) if the difference was $300,000 or more.

The bill would take effect September 1, 2019, and would apply only to an offense committed on or after the effective date of the bill.

SUBJECT: Renewing volunteer deputy registrar appointments and forgoing training

COMMITTEE: Elections — favorable, without amendment

VOTE: 9 ayes — Klick, Cortez, Bucy, Burrows, Cain, Fierro, Israel, Middleton, Swanson

0 nays

WITNESSES: For — Sabra Srader, Texas Association of Elections Administrators; Glen Maxey, Texas Democratic Party; Brandon Moore; (*Registered, but did not testify*: Amanda Gnaedinger, Common Cause Texas; Joanne Richards, Common Ground for Texans; Cinde Weatherby, League of Women Voters of Texas; Lon Burnam, Public Citizen; Karen Collins; Ed Johnson; Crystal Main)

Against — Kay Tyner; (*Registered, but did not testify*: Alan Vera, Harris County Republican Party Ballot Security Committee; Kathaleen Wall, Republican Party of Texas State Republican Executive Committee Election Integrity Working Group)

On — Christina Adkins, Secretary of State; (*Registered, but did not testify*: Heather Hawthorne, County and District Clerks Association of Texas; Jenifer Favreau, Texas Association of Elections Administrators)

BACKGROUND: Election Code sec. 13.031 requires county voter registrars to appoint volunteer deputy registrars to encourage voter registration. In order to be eligible to serve as a volunteer deputy registrar, a person must:

- be at least 18;
- not have been finally convicted of a felony or, if convicted, have been fully discharged, completed a period or probation, been pardoned, or otherwise released from the disability to vote;
- be a qualified voter; and
- not have been finally convicted of the fraudulent use or possession of identifying information.

Volunteer deputy registrars serve for terms expiring December 31 of even-numbered years, and they must complete a training program before they can begin their duties.

Sec. 13.047 requires the secretary of state to develop the program used to train volunteer deputy registrars in election law related to the registration of voters and to distribute the necessary materials to each county voter registrar.

DIGEST:

HB 529 would require county voter registrars to notify volunteer deputy registrars by November 30 of even-numbered years that their terms would expire on December 31 of that year.

Notices could be delivered by mail or email, and would have to be accompanied by a renewal application and information about any changes in election law that were relevant to the role of a volunteer deputy registrar and that had occurred during the volunteer deputy registrar's term of appointment.

Voter registrars would be required to immediately appoint volunteer deputy registrars to a new term beginning on the next January 1 if the volunteer deputy registrars:

- signed the renewal application and returned it to the voter registrar before the volunteer deputy registrar's term expired;
- signed an affidavit confirming that the volunteer deputy registrar had read and understood the information about changes in election law, if applicable; and
- remained eligible for appointment as a volunteer deputy registrar under current requirements.

Volunteer deputy registrars appointed to a new term would not be required to attend training unless they failed to comply with any requirements imposed on them.

The bill would take effect September 1, 2019.

SUPPORTERS

HB 529 would allow voter registrars to waive the time-consuming training

SAY:

requirement for certain volunteer deputy registrars who had been determined not to need additional training. Some volunteer deputy registrars have served for several years and do not need repeated or additional training. The option to waive training for these individuals could allow election officials to spend more time preparing for elections instead of conducting unnecessary instruction.

Voter registrars still would be allowed to require training for volunteer deputy registrars if there were changes to election law or if they determined that a volunteer deputy registrar needed additional training.

OPPONENTS SAY:

HB 529 would remove a training requirement that is necessary to help volunteer deputy registrars understand complex and ever-changing election laws. Volunteer deputy registrars should receive training annually to avoid confusion during elections.

SUBJECT: Authorizing Williamson County to enforce certain vehicle safety standards

COMMITTEE: Transportation — favorable, without amendment

VOTE: 9 ayes — Canales, Landgraf, Goldman, Krause, Leman, Martinez, Ortega, Raney, E. Thompson

0 nays

4 absent — Bernal, Y. Davis, Hefner, Thierry

WITNESSES: For — Dana Moore, Texas Trucking Association; Jason Badder, Michael Delia, Williamson County Sheriff's Office; Jim McLean, Williamson County Sheriff's Department; (*Registered, but did not testify*: Adam Haynes, Conference of Urban Counties; Jim Allison, County Judges and Commissioners Association of Texas)

Against — None

On — (*Registered, but did not testify*: Jeremy Nordloh, Texas Department of Public Safety; John Esparza, Texas Trucking Association)

BACKGROUND: Transportation Code ch. 644 outlines the counties eligible to apply for certification to enforce certain traffic and highway laws, including prohibiting the further operation of a commercial vehicle on a highway if the vehicle or operator of the vehicle is in violation of a federal safety regulation.

Some have noted that Williamson County does not meet the population criteria to apply for certification to enforce commercial motor vehicle safety standards even though certain law enforcement officers have the necessary training and already support the Department of Public Safety in these efforts.

DIGEST: HB 511 would allow a sheriff or a deputy sheriff of a county that had a population of 400,000 or more and bordered the county in which the State Capitol is located (Williamson County) to apply for certification to

enforce commercial motor vehicle safety standards.

The bill would take effect September 1, 2019.

SUBJECT: Increasing the funding cap on basic civil legal services to the indigent

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 17 ayes — Zerwas, Longoria, C. Bell, G. Bonnen, Buckley, S. Davis, Hefner, Howard, Jarvis Johnson, Miller, Minjarez, Muñoz, Sheffield, Sherman, Smith, Stucky, J. Turner

0 nays

10 absent — Capriglione, Cortez, M. González, Rose, Schaefer, Toth, VanDeaver, Walle, Wilson, Wu

WITNESSES: For — Karen Miller, Texas Legal Services Center (*Registered, but did not testify*: Lee Parsley, Texans for Lawsuit Reform; George Christian, Texas Civil Justice League; Lisa Kaufman, Ashley McConkey, Texas Legal Services Center; Alexis Tatum, Travis County Commissioners Court; Randall Chapman)

Against — (*Registered, but did not testify*: Jim Baxa)

On — Nathan Hecht, Supreme Court of Texas (*Registered, but did not testify*: Betty Torres, Texas Access to Justice Foundation)

BACKGROUND: Government Code sec. 402.007 requires the attorney general to pay money received for a debt, penalty, or restitution into the state treasury. Of this revenue, the comptroller credits the net amount of certain civil penalties or payments to the judicial fund for programs that provide basic civil legal services to the indigent. The total amount credited to the fund for this purpose may not exceed $50 million per state fiscal biennium.

Some suggest that the $50 million per biennium cap placed on funding to provide basic civil legal services for the indigent may prevent the use of funds that have been secured for that purpose.

DIGEST: CSHB 2235 would increase the cap on the amount allowed to be credited to the judicial fund for programs that provide basic civil legal services to

the indigent to $50 million per state fiscal year, rather than per biennium.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Permitting distillers of spirits to provide samples to retailers

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — T. King, Goldman, Geren, Harless, Hernandez, Kuempel, Paddie

0 nays

4 absent — Guillen, Herrero, K. King, S. Thompson

WITNESSES: For — Todd Gregory, BlackEyed Distilling (*Registered, but did not testify*: Dale Szyndrowski, Distilled Spirits Council; Robert Floyd, Southern Glazers; Amber Hausenfluck, Texas Distilled Spirits Association; Tom Spilman, Wholesale Beer Distributors of Texas)

Against — None

On — (*Registered, but did not testify*: Thomas Graham and Bentley Nettles, Texas Alcoholic Beverage Commission)

BACKGROUND: Alcoholic Beverage Code sec. 102.02 authorizes a permitted wholesaler to give liquor samples to a permitted alcohol retailer, subject to certain restrictions. The retailer may sample the product only in the presence of a wholesaler.

Some note that permitted distillers may not provide liquor samples to retailers without the presence of a wholesaler.

DIGEST: CSHB 1997 would allow holders of a distiller's and rectifier's permit and their employees to provide samples and product tastings to permitted retailers and their employees. The bill would apply to permitted distillers, rectifiers, and nonresident sellers.

Distilled spirits provided as a sample or at a tasting would have to:

- be manufactured by the permit holder;
- be of a brand that the retailer had not previously purchased;
- be limited to 750 milliliters of each brand; and
- meet all applicable labeling requirements.

At tastings, permitted distillers could make a presentation or answer questions. They could legally transport distilled spirits to and from a retail premise for a sampling or tasting. A retail permit holder could not sample a distilled spirit on the retail premises unless the permitted distiller was present.

The cost of the distilled spirits at a sampling or tasting would be the responsibility of the holder of the distiller and rectifier's permit. The permitted distiller could not negotiate price or establish agreements with retailers while providing samples or tastings.

The bill would take effect September 1, 2019.

SUBJECT: Prohibiting adverse employment action against certain first responders

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, E. Rodriguez, Smithee, Springer

0 nays

WITNESSES: For — Charley Wilkison, Combined Law Enforcement Associations of Texas; Brad McCutcheon, Texas State Association of Firefighters; (*Registered, but did not testify*: Joel Romo, Association of Texas EMS Professionals; Kenneth Casaday, Austin Police Association; Jared Clark, Collin County Deputies Association; Alissa Sughrue, National Alliance on Mental Illness (NAMI) Texas; Eric Kunish, National Alliance on Mental Illness-Austin; Will Francis, National Association of Social Workers-Texas Chapter; Mitch Landry, Texas Municipal Police Association; Mike Rumfield, TMPA/America's Defenders Foundation)

Against — (*Registered, but did not testify*: Lorena Campos, City of Dallas)

On — (*Registered, but did not testify*: Craig Holzheauser, Texas EMS Alliance)

DIGEST: HB 2969 would prohibit adverse employment actions against first responders who had a mental illness.

The bill would apply to first responders employed by a state agency or political subdivision of the state whose duties included responding rapidly to an emergency. This would include licensed peace officers, certain fire protection personnel, and licensed emergency medical services personnel.

An employer of a first responder would be prohibited from suspending, terminating, or taking any other adverse employment action against a first responder solely because the employer knew or believed that the first responder had a mental illness, except as was necessary to ensure public

safety.

A first responder could assert a claim against an employer, including a governmental entity, in a judicial or administrative proceeding or as a defense in a judicial or administrative proceeding. An aggrieved person could seek compensatory damages, reasonable attorney's fees and court costs, and any other appropriate relief.

The bill would waive sovereign immunity to such a lawsuit for liability created by the bill.

The bill would take effect September 1, 2019, and would apply only to a suspension, termination, or other adverse employment action taken by an employer against a first responder on or after that date.

SUPPORTERS SAY:

HB 2969 would put legal protections in place for first responders who had a mental illness. This could encourage first responders suffering from job-related trauma or other mental health issues to disclose this information to supervisors without fear of being fired or subjected to an adverse employment action.

First responders such as police officers, firefighters, and emergency medical personnel experience stress, trauma, and death on a daily basis, and those experiences take a toll. Studies have shown that many first responders report suffering from PTSD, and a survey of firefighters reported that almost half had considered suicide. However, despite efforts by professional associations to help their members access mental health treatment, many first responders still fear they will be stigmatized if they disclose a mental illness to superiors and coworkers. The bill would encourage first responders to talk about their mental state, which could enable them to get help and heal.

The bill would allow employers to take appropriate employment actions if a first responder's mental state could potentially endanger the welfare of the responder's coworkers or the public, which would protect public safety. Because HB 2969 makes no requirements that first responders be subjected to mental health assessments, the bill would not fiscally burden counties.

OPPONENTS SAY:

HB 2969 could negatively impact public safety by deterring a police department from taking reasonable actions involving an employee for fear of litigation. Because the bill would not define what constituted an adverse employment action and waives sovereign immunity, it could lead to unintended consequences. For instance, a department might hesitate to place an officer who had expressed a mental health issue on administrative leave because that could be interpreted as an adverse employment action.

Current law is sufficient to protect first responders from unlawful discrimination based on their mental health. The Texas Labor Code and the Americans with Disabilities Act already prohibit discrimination against an employee based on a disability.

The bill also could cause expenses for some counties through additional staff and mental health assessments of first responders both during the hiring and employment process.

SUBJECT: Prohibiting certain pedestrian movement near train cars at crossings

COMMITTEE: Transportation — favorable, without amendment

VOTE: 11 ayes — Canales, Landgraf, Bernal, Goldman, Hefner, Krause, Leman, Ortega, Raney, Thierry, E. Thompson

0 nays

2 absent — Y. Davis, Martinez

WITNESSES: For — Cheryl Southwell, Houston Police Department; (*Registered, but did not testify*: Lindsay Mullins, Burlington Northern Santa Fe Railway; Gary Pedigo, Brotherhood of Locomotive Engineers and Trainmen; Mark Malone, Dallas Police Association; Kamron Saunders, Sheet Metal Air Rail Transportation Union; Mackenna Wehmeyer, Texas Rail Advocates; Dennis Kearns, Texas Railroad Association; Michael Grimes, Texas Shortline and Regional Railroad Association; Rene Lara, Texas AFL-CIO; Chelsy Hutchison, Union Pacific Railroad; Carolyn Cook, United States Department of Transportation)

Against — None

BACKGROUND: Transportation Code, ch. 552 governs rules of the road for pedestrians.

Some note that the movement of pedestrians in front of, under, between, or through the cars of moving or stationary trains causes a safety hazard for pedestrians, rail operators and other vehicles.

DIGEST: HB 2775 would prohibit pedestrians from moving in front of, under, between, or through the cars of a moving or stationary train occupying any part of a railroad grade crossing.

The bill would take effect September 1, 2019.

SUBJECT: Reducing the wait to seek nondisclosure in deferred adjudication cases

COMMITTEE: Corrections — favorable, without amendment

VOTE: 9 ayes — White, Allen, Bailes, Bowers, Dean, Morales, Neave, Sherman, Stephenson

0 nays

WITNESSES: For — Allen Place, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Pamela Brubaker, Austin Justice Coalition; Traci Berry, Goodwill Central Texas; Cate Graziani, Grassroots Leadership and Texas Advocates for Justice; Kathleen Mitchell, Just Liberty; Julia Egler, National Alliance on Mental Illness-Texas; Lori Henning, Texas Association of Goodwills; Douglas Smith, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Charlie Malouff, Texas Inmate Families Association; Amite Duncan, Texas Prisons Air Conditioning Advocates; Jason Vaughn, Texas Young Republicans; Alexis Tatum, Travis County Commissioners Court; Carl F. Hunter II; Maria Person; Sandra Wolff)

Against — None

On — (*Registered, but did not testify*: Laurie Pherigo)

BACKGROUND: Government Code sec. 411.0725 allows individuals who were placed on deferred adjudication for certain offenses that were then discharged and dismissed to petition the court that placed them on deferred adjudication for an order of nondisclosure of criminal history record information within certain time frames.

A person may petition the court for an order of nondisclosure only on or after:

- the discharge and dismissal of charges, for certain misdemeanor offenses;
- the second anniversary after the person's charges were discharged

and dismissed, if the offense for which the person was placed on deferred adjudication was a misdemeanor that involved kidnapping, unlawful restraint, public indecency, certain weapons offenses, certain sexual and assault offenses, disorderly conduct, or related offenses as specified in statute; or

- five years after the charges were discharged and dismissed if the offense for which the person was placed on deferred adjudication was a felony.

Some suggest that the length of the waiting periods to petition for nondisclosure can prevent discharged individuals from moving on with their lives in a timely manner.

DIGEST:

HB 1452 would allow individuals placed on deferred adjudication to petition a court for an order of nondisclosure of criminal history record information one year after the discharge and dismissal of charges for misdemeanor offenses that involved kidnapping, unlawful restraint, public indecency, certain weapons offenses, certain sexual and assault offenses, disorderly conduct, or related offenses as specified in the bill.

An individual could petition a court for an order of nondisclosure of criminal record information three years after the discharge and dismissal of charges for certain felony offenses.

The bill would take effect September 1, 2019.

SUBJECT: Clarifying the transfers of motor fuel that are subject to motor fuel taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — Burrows, Guillen, Bohac, Cole, Martinez Fischer, Murphy, Noble, Sanford, Shaheen, Wray

0 nays

1 absent — E. Rodriguez

WITNESSES: For — James LeBas, Texas Oil and Gas Association; (*Registered, but did not testify*: Kinnan Golemon, Shell Oil Company; Robert Flores, Texas Energy Advocates Coalition; Sabrina Calloway, Valero Energy)

Against — None

BACKGROUND: Tax Code ch. 162 generally taxes the removal of gasoline or diesel fuel from a terminal using the terminal rack, other than by bulk transfer.

A bulk transfer is a transfer of motor fuel from one location to another by pipeline or marine movement within a bulk transfer/terminal system. A bulk transfer/terminal system is a motor fuel distribution system consisting of refineries, pipelines, terminals, and marine vessels transporting motor fuel to a refinery or terminal.

Gasoline and diesel fuel may be exempt from taxation if exported to another state or a foreign country. In order to qualify for the exemption, the bill of lading must indicate the destination state or country. However, gasoline or diesel fuel for export is taxed if sold in the state to a person who is not a licensed supplier, permissive supplier, distributor, importer, or exporter. The person selling the gasoline or diesel fuel is liable for and required to collect the tax.

Some suggest the current statute can lead to unnecessary motor fuel tax payments, audit deficiencies, and time-consuming motor fuel tax refund requests by taxpayers due to the lack of clarity regarding which transfers

are subject to tax.

DIGEST:

HB 3954 would modify the rules for determining whether certain transfers were subject to motor fuels tax.

Bulk transfer. The bill would expand the definition of a bulk transfer qualifying for exclusion from motor fuels tax to include transfers to and from a motor fuel storage facility within a bulk transfer/terminal system. A motor fuel storage facility would be defined as a storage facility supplied by pipeline or marine vessel that did not have a rack for removal of motor fuel by any means of conveyance that was outside the bulk/transfer terminal system.

A bulk transfer also would include a movement of motor fuels by marine vessel, including a barge, that was owned by a licensed supplier or permissive supplier. The definition of a supplier would be expanded to include a person who owned motor fuel in a marine vessel so long as that person met all other statutory requirements.

Bulk transfers would be limited to transfers taking place within the United States.

Taxable exports. The bill would change the rules for determining whether an export of gasoline or diesel fuel was subject to tax.

Gasoline or diesel fuel sold into a truck or railcar in this state for export to another state or a foreign country would be subject to tax if the purchaser was not a licensed supplier, permissive supplier, distributor, importer, or exporter.

When exported to a foreign country by marine vessel, gasoline or diesel fuel would be subject to tax if neither the purchaser nor the exporter of record was a licensed supplier, permissive supplier, licensed distributor, licensed importer, or licensed exporter.

Foreign country documentation. The bill would allow shipping documents other than a bill of lading to be used to establish that gasoline or diesel fuel was exported to a foreign country in order to qualify for

exemption from tax.

The bill would take effect September 1, 2019.

SUBJECT: Authorizing emergency grants for volunteer fire departments

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 9 ayes — Springer, Anderson, Beckley, Buckley, Burns, Fierro, Meza, Raymond, Zwiener

0 nays

WITNESSES: For — Chris Barron, State Firefighters and Fire Marshals Association; (*Registered, but did not testify*: Patrick Tarlton, Texas Deer Association; Marissa Patton, Texas Farm Bureau; Monty Wynn, Texas Municipal League; Robert Turner, Texas Sheep and Goat Raisers Association)

Against — None

On — (*Registered, but did not testify*: Don Galloway, Texas A&M Forest Service)

BACKGROUND: Government Code ch. 614, subch. G governs the rural volunteer fire department assistance program, which is administered by the Texas A&M Forest Service. The program distributes money from the volunteer fire department assistance fund based on established criteria, and this funding can be used to help with the purchase of new firefighting equipment.

Interested parties have suggested expanding the rural volunteer fire department assistance program so that grants could be used to help pay for the repair or replacement of equipment damaged or lost in a disaster.

DIGEST: CSHB 3070 would allow a volunteer fire department whose equipment was damaged or lost in responding to a declared state of disaster to make an emergency grant request to the rural volunteer fire department assistance program. The request could be for funds for the repair or replacement of damaged or lost equipment and for the purchase of a machine to clean personal protective equipment.

The bill would require the director of the Texas A&M Forest Service to

consider a volunteer fire department's need for emergency assistance when distributing money from the volunteer fire department assistance fund. The director would be required to process a request for emergency assistance before any other type of request for assistance.

The bill would take effect September 1, 2019.

SUBJECT: Defining liability for those who conduct prescribed burns

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 9 ayes — Springer, Anderson, Beckley, Buckley, Burns, Fierro, Meza, Raymond, Zwiener

0 nays

WITNESSES: For — Merwyn Kothmann, Prescribed Burning Alliance of Texas; Ray Hinnant; (*Registered, but did not testify*: Donnie Dippel, Texas Agricultural Industries Association; Joe Morris, Texas Forestry Association, Texas Sheep and Goat Raisers Association; Robert Turner, Texas Forestry Association)

Against — None

On — Jessica Escobar, Texas Department of Agriculture

BACKGROUND: Natural Resources Code ch. 153 authorizes the Prescribed Burning Board to permit prescribed burning organizations to conduct a burn under certain circumstances.

Some suggest that the role and scope of liability for those who participate in prescribed burn activities is unclear.

DIGEST: CSHB 2053 would repeal the authority of prescribed burning organizations to conduct a prescribed burn and remove related references to such organizations from statute.

The bill would allow a "burn boss," defined as an individual who was responsible for directing a prescribed burn under a written prescription plan, to be held liable for property damage, personal injury, or death caused by or resulting from the burn if the burn boss was otherwise liable under other law.

If the burn boss was not the owner, lessee, or occupant of the land on

which a burn was conducted, the written prescription plan for that burn would be required to include the signature of the burn boss or the owner, lessee, or occupant of the land and a contract that acknowledged liability.

A person other than the burn boss could be held liable for property damage, personal injury, or death caused by or resulting from the burn, subject to certain statutory limitations, if the person was grossly negligent or caused harm or damage intentionally and was otherwise liable under other law.

The provisions of the bill could not be construed to create a cause of action or create a standard of care, obligation, or duty that formed the basis of a cause of action.

The bill would take effect September 1, 2019, and would apply only to a cause of action that accrued on or after that date.

SUBJECT: Assistance to survivors of certain employees killed in line of duty

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 23 ayes — Zerwas, Longoria, C. Bell, G. Bonnen, Buckley, Capriglione, Cortez, S. Davis, M. González, Hefner, Howard, Jarvis Johnson, Miller, Muñoz, Schaefer, Sherman, Smith, Stucky, Toth, J. Turner, VanDeaver, Walle, Wilson

0 nays

4 absent — Minjarez, Rose, Sheffield, Wu

WITNESSES: For — (*Registered, but did not testify*: Chris Jones and Charley Wilkison, Combined Law Enforcement Associations of Texas; Jimmy Rodriguez, San Antonio Police Officers Association; Cheri Siegelin, Texas Correctional Employees-Huntsville; Scott Houston, Texas Municipal League; Noel Johnson, TMPA; Alexis Tatum, Travis County Commissioners Court; Robert Norris)

Against — None

BACKGROUND: Government Code sec. 615.121(a) requires the state to pay funeral expenses and monthly annuities to an eligible surviving spouse of a peace officer or a designated custodial employee of the Texas Department of Criminal Justice who was killed in the line of duty and who had not qualified for an annuity under an employees' retirement plan. The benefits include funeral expenses for the deceased person and monthly payments that equal the greater of:

- the monthly annuity the deceased person would have received if the person had survived and retired on the last day of the month in which the person died, and had been eligible to receive an annuity under an employees' retirement plan; or
- the minimum monthly annuity the deceased person would have received if the person had been employed by the state for 10 years, had been paid a salary at the lowest amount provided by the

general appropriations act for the applicable position, and had been eligible to retire under the Employees Retirement System of Texas.

Some suggest that the same benefits should be made available to the surviving spouses of detention officers and jailers who are in charge of inmates in city or county jails who had not yet vested in a public retirement system.

DIGEST:

HB 872 would add jailers and county jailers or guards to the list of employees whose surviving spouses were eligible to receive certain benefits if the employee was killed in the line of duty and had not qualified for an annuity under an employees' retirement plan.

The bill would take effect September 1, 2019, and would apply to assistance payments to survivors of law enforcement officers and employees on or after that date, regardless of the date the officer or employee died.

SUBJECT: Establishing a permitting process for brackish groundwater production

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Larson, Metcalf, Dominguez, Farrar, Harris, T. King, Lang, Nevárez, Price, Ramos

0 nays

1 absent — Oliverson

WITNESSES: For — Hope Wells, San Antonio Water System; Kyle Frazier, Texas Desalination Association; Stacey Steinbach, Texas Water Conservation Association; (*Registered, but did not testify*: Trey Lary, Allen Boone Humphries Robinson LLP; Steve Perry, Chevron USA; Brian Sledge, City of Bryan, Prairielands Groundwater Conservation District; Tammy Embrey, City of Corpus Christi; Christine Wright, City of San Antonio; Dirk Aaron, Clearwater Underground Water Conservation District; Teddy Carter, Devon Energy; Edmond McCarthy, Fort Stockton Holdings; Charles Flatten, Hill Country Alliance; Tom Oney, Lower Colorado River Authority; C.E. Williams, Panhandle Groundwater Conservation District; Deirdre Delisi, San Antonio Chamber of Commerce; Matthew Bentley, San Jose Water Group dba Canyon Lake Water Service Company; Mia Hutchens, Texas Association of Business; Justin Yancy, Texas Business Leadership Council; Billy Howe, Texas Farm Bureau; Ryan Paylor, Texas Independent Producers and Royalty Owners Association; Shanna Igo, Texas Municipal League; Dean Robbins, Texas Water Conservation Association; Perry Fowler, Texas Water Infrastructure Network; Joey Park, Texas Wildlife Association; Vanessa Puig-Williams, Trinity Edwards Spring Protection Association; CJ Tredway, Texas Oil and Gas Association)

Against — None

On — Victoria Whitehead, High Plains Underground Water Conservation District No. 1; (*Registered, but did not testify*: John Dupnik, Texas Water Development Board)

BACKGROUND: Interested parties have noted that the development of brackish groundwater resources could provide a way to meet Texas' future water needs.

DIGEST: CSHB 722 would allow groundwater conservation districts to adopt rules governing permits for the production of brackish groundwater. The bill also would set requirements for permit applications and for brackish groundwater production in those districts.

Rules. The bill would authorize a groundwater conservation district located over a designated brackish groundwater production zone to adopt rules governing the issuance of permits for completing and operating a brackish groundwater well.

If a groundwater conservation district received a petition from a person with a legally defined interest in groundwater in the district, it would have to adopt rules governing permits for brackish groundwater projects within 180 days.

Rules adopted by districts would have to provide greater access to brackish groundwater by simplifying procedures, avoiding permitting delays, and saving expense for permit seekers. Rules could not impair property rights and would have to specify all additional information that would have to be included in a permit application.

Rules adopted for the permitting of brackish groundwater production projects would be required to:

- provide for the processing of an application for a brackish groundwater permit in the same manner as a fresh groundwater permit, except where otherwise directed by the bill;
- permit withdrawals of brackish water from a designated brackish groundwater production zone that were consistent with Water Code regulations;
- establish a minimum term of 30 years for brackish groundwater production permits;
- require the implementation of a monitoring system recommended by the Texas Water Development Board (TWDB) to monitor water

levels and water quality in the aquifer or adjacent aquifers in which the designated brackish groundwater production zone was located; and

- protect against subsidence through the monitoring of land elevations in brackish groundwater production zones in the Gulf Coast Aquifer, as defined in the bill.

These rules would apply to permits for brackish water treatment projects, including municipal projects designed to provide a public source of drinking water and electric generation projects to treat brackish groundwater to water quality standards sufficient for the project needs. Groundwater conservation districts could not adopt rules limiting access to groundwater production within a designated brackish groundwater production zone to only these types of projects.

The holder of a permit issued for brackish groundwater production would have to submit annual reports to the groundwater conservation district that included the amount of brackish groundwater that had been withdrawn, the average monthly quality of the water, and aquifer levels for the production zone and any other area for which the permit required monitoring. These reports would be provided to TWDB.

Applications. An application for a brackish groundwater production zone operating permit would have to include:

- the proposed well field design compared to the designated brackish groundwater production zone;
- the requested maximum groundwater withdrawal rate for the proposed project; and
- the number and location of monitoring wells needed to determine the effects of the project on water levels and quality in the aquifer, adjacent aquifers, aquifer subdivisions, or geologic stratum within the designated production zone.

The application also would have to incorporate a report that included a simulation of the project's effects on water levels and water quality in the aquifer or adjacent aquifers within the production zone. A description of the model used for the simulation, along with sufficient information for a

technical reviewer to understand the parameters and assumptions used to develop the model, also would have to be included.

Permit applications would be governed solely by district rules consistent with the bill. When considering an application to extend the term of a permit, districts could use only rules that were in effect at the time the application was submitted.

Application reviews. The groundwater conservation district that received such an application would have to submit it to TWDB, which would conduct a technical review of the application.

A report of that review, including findings regarding the compatibility of the proposed well field design with the brackish groundwater production zone and recommendations for the required monitoring system, would then be submitted to the district. A groundwater conservation district could not schedule a hearing on an application until it received TWDB's technical review report.

Investigations of permits' effects. If a TWDB investigation was requested by the district, TWDB would have 120 days to investigate and issue a report on whether a project's brackish groundwater production was projected to cause significant and unanticipated aquifer level declines, negative effects on an aquifer's quality of water, or subsidence in the Gulf Coast Aquifer.

After a district received this report and gave appropriate notice and hearing, the district could amend the relevant permit to establish a production limit necessary to mitigate any identified negative effects. The district also could approve a mitigation plan to alleviate any negative effects.

Other provisions. Groundwater conservation districts would have to adopt rules so that the authorized production of brackish groundwater in a district was in addition to the amount of managed available groundwater. Districts would be required, to the extent possible, to issue permits so that the total volume of groundwater and brackish groundwater production in a designated brackish groundwater production zone were equal.

This bill would take effect September 1, 2019.

NOTES: According to the Legislative Budget Board, the bill would have an estimated negative impact of about $225,000 in general revenue related funds for fiscal 2020-21.